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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JOHN ROETTGEN,

12 Plaintiff,

13 v.

14 D. PARAMO, et al.,

15 Defendants.
16

Case No.: 3:16-cv-01806-LAB-BGS

**ORDER RESPONDING TO NOTICE
OF REFERRAL**

17 John Roettgen (“Plaintiff”), an inmate currently incarcerated at the California State
18 Prison – Sacramento, initially filed this action on July 11, 2016. (ECF No. 1.) On July
19 21, 2016, this Court granted Plaintiff’s Motion to Proceed *In Forma Pauperis* (“IFP”)
20 and dismissed his Complaint (“Compl.”) pursuant to 28 U.S.C. § 1915(e)(2). (ECF No.
21 3.) The Court found a number of deficiencies in his pleading, but nevertheless granted
22 Plaintiff forty-five (45) days to file an amended complaint. (*Id.* at 10-11.)

23 Plaintiff failed to comply with the Court’s Order. Instead, nearly seven (7) months
24 after the Court issued the July 21, 2016 Order, Plaintiff filed a “Motion for Copy of Court
25 Order, Reinstate Case and for 45 days in which to file First Amended Complaint.” (ECF
26 No. 5.) On April 6, 2017, the Court denied Plaintiff’s request to reopen the case but
27 granted him additional time to file his amended pleading. (ECF No. 6.) The Court also
28 directed the Clerk of Court to mail a copy of the Court’s July 21, 2016 Order to Plaintiff.

1 (*Id.*) On August 1, 2017, Plaintiff filed a second extension of time to file his amended
2 pleading, which the Court also granted. (ECF Nos. 8, 9.) Plaintiff did not comply with
3 this Order either. Instead, Plaintiff waited another year and, on August 23, 2018, brought
4 his third request for an extension of time to file his amended pleading. (ECF No. 11.)

5 On September 13, 2018, the Court granted Plaintiff one final extension of time in
6 which to comply with the July 21, 2016 Order. (ECF No. 12.) Plaintiff was informed
7 that if he failed to comply with the Court's Order, the Court would issue a final order of
8 dismissal. (*Id.*) In addition, the Court informed Plaintiff that no further extensions of
9 time would be granted absent a showing of exceptional circumstances. (*Id.*)

10 That timeframe passed (yet again) without a filing from Plaintiff, and the Court
11 dismissed the entire action for the reasons set forth in the Court's July 21, 2016 Order
12 and for his failure to prosecute pursuant to Fed.R.Civ.P. 41(b) in compliance with the
13 Court's September 13, 2018 Order. (ECF No. 13.) Judgment was entered on November
14 7, 2018. (ECF No. 14.) On November 13, 2018, the Court received Plaintiff's First
15 Amended Complaint ("FAC"), but rejected the FAC for filing. (ECF No. 15, citing
16 *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996)). On January 2, 2019, Plaintiff
17 filed a "Motion Requesting Court to Vacate order Dismissing Case." (ECF No. 17.) The
18 Court denied Plaintiff's Motion. (ECF No. 18.) Following that denial, Plaintiff filed a
19 "Notice of Appeal" on February 8, 2019. (ECF No. 19.)

20 The Ninth Circuit has now issued a "Referral Notice" which refers the matter to
21 this Court "for the limited purpose of determining whether in forma pauperis status
22 should continue for this appeal or whether the appeal is frivolous or taken in bad faith."
23 (ECF No. 22 citing 28 U.S.C. § 1915(a) (3).)

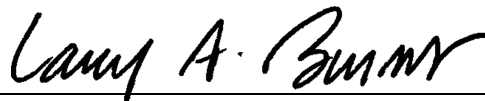
24 In the Court's January 11, 2019 Order, the Court found that Plaintiff unreasonably
25 delayed in complying with the Court's Orders throughout the entire two-and-a-half-year
26 period this action was pending. (ECF No. 18 at 4.) Moreover, Plaintiff failed to provide
27 any rational basis for the prolonged delays. (*See id.*)
28

1 After reviewing the entire record, the Court finds that Plaintiff's appeal lacks any
2 arguable basis in law or fact and therefore would not be taken "in good faith" pursuant to
3 28 U.S.C. § 1915(a)(3). *See Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977)
4 (indigent appellant is permitted to proceed IFP on appeal only if appeal would not be
5 frivolous.).

6 The Clerk of Court is directed to notify the Ninth Circuit Court of Appeals of this
7 Order. *See Fed.R.App.P. 24(a)(4)*.

8 **IT IS SO ORDERED.**

9 Dated: March 11, 2019



Hon. Larry Alan Burns
Chief United States District Court